

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK RADZIKOWSKI,

Defendant-Appellant.

UNPUBLISHED

December 21, 2001

No. 222084

Wayne Circuit Court

Criminal Division

LC No. 94-010932

Before: Murphy, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of receiving or concealing stolen property over \$100, MCL 750.535,¹ and sentenced to eighteen months' probation. He appeals as of right. We affirm.

This case arises out of the discovery, pursuant to a lawfully executed search warrant, of thousands of Chrysler auto parts and tools in defendant's home and a storage facility under defendant's control. Defendant was formerly a brake laboratory supervisor for Chrysler.

I

Defendant argues that he is entitled to a new trial because the prosecutor may have called, as a material witness, the confidential informant named in the search warrant without disclosing that the witness was the confidential informant. Because defendant did not raise this issue at trial, it is not preserved. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000). Accordingly, defendant must show a plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.* The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome in the trial court. *Id.* Reversal is warranted only when the plain, forfeited error results in a conviction of an innocent defendant or when the error seriously affects the fairness, integrity, or public reputation of judicial proceedings independent of the defendant's innocence. *Id.*

¹ The statute was subsequently amended setting \$20,000 as the required value to establish a felony. 1998 PA 311.

In this case, even if the prosecution's failure to disclose the identity of the unnamed informant can be considered "plain error," *People v Underwood*, 447 Mich 695, 703-707; 526 NW2d 903 (1994); *People v Sammons*, 191 Mich App 351, 368; 478 NW2d 901 (1991), it did not affect defendant's substantial rights. The trial record establishes not only that defendant knew during trial that the witness was *an* informant, but that he very likely was *the* anonymous informant referenced in the search warrant, given that the witness was the only non-family member to have visited the storage facility before the police executed the search warrant. Moreover, even if defendant was not certain that the witness was the anonymous informant, defendant has not established that the prosecution's failure to disclose the witness' identity affected the outcome of the trial in the least. Although defendant claims that he could have brought out alleged discrepancies between the witness' and a detective's testimony had he known that the witness was the anonymous informant, a review of their testimony reveals at most a minor discrepancy about when the witness contacted the detective about defendant's alleged possession of auto parts. As the prosecutor points out, there is no discrepancy that the witness informed the detective about defendant's possession of the parts before the search was executed in June 1994. Thus, this unpreserved issue does not warrant appellate relief.

II

Next, the trial court did not abuse its discretion in allowing the late endorsement of the witness who is claimed to have been the informant discussed above. MCL 767.40a(4); *People v Canter*, 197 Mich App 550, 563; 496 NW2d 336 (1992). Defendant had notice that the witness was a possible witness because his name was included on the prosecution's witness list. Further, the trial court directed the prosecution to make the witness available for an interview by defense counsel before his testimony. The trial court's remedy adequately protected defendant's rights. *People v Carner*, 117 Mich App 560, 574-575; 324 NW2d 78 (1982). Contrary to defendant's claim, there is no indication that his trial strategy was compromised by the witness' late endorsement. Further, defendant has not demonstrated that the witness gave false testimony or that the prosecution knowingly injected false testimony into the proceedings. See *Canter*, *supra* at 558-559.

III

The trial court also did not abuse its discretion in denying defendant's motion for a new trial on the ground that the verdict was against the great weight of the evidence.²

The elements of receiving or concealing stolen property under MCL 750.535 are as follows: (1) that the property was stolen; (2) the value of the stolen property; (3) the receiving, possession, or concealment of the stolen property by the defendant with the knowledge of the defendant that the property had been stolen; (4) the identity of the property as being that previously stolen; and (5) the guilty constructive or actual knowledge of the defendant that the

² Although the prosecutor contends that defendant's motion for a new trial was untimely and, therefore, this issue should not be considered preserved for appeal, we note that, because defendant was convicted in a bench trial, he may properly raise this issue on appeal without first presenting it to the trial court. See MCR 7.211(C)(1)(c).

property received or concealed had been stolen. *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151 (1997).

We agree with the trial court that there was overwhelming circumstantial evidence that defendant possessed stolen property. See *People v Toodle*, 155 Mich App 539, 553-554; 400 NW2d 670 (1986). There was testimony that defendant's basement resembled a veritable auto parts warehouse, and that more than 50,000 parts were seized from defendant, including Chrysler tools labeled by department numbers, brand-new tires that were not sold in stores but made only for Chrysler, and various Chrysler test engines with identification numbers or tags on them. We likewise agree with the trial court that there was ample circumstantial evidence of defendant's "guilty knowledge" that the property was stolen. There was testimony that defendant took the property to a storage facility, which was rented in the name of a woman. Further, according to the informant witness, defendant instructed his son to remove the tags from two engines while en route to defendant's residence. Defendant's statement that "my son is not part of this" also supports an inculpatory inference of wrongdoing. Finally, it was also undisputed that the value of the auto parts exceeded \$100.

Thus, the trial court's verdict was not against the great weight of the evidence.

IV

Next, we disagree with defendant's claim that the trial court failed to issue sufficient findings of fact and conclusions of law because the findings indicated that the court improperly shifted the burden of proof to defendant. MCR 6.403; *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). The court's findings reveal that it properly held the prosecution to its burden of establishing defendant's guilt beyond a reasonable doubt. The prosecutor need not negate every reasonable theory of innocence, but must prove his or her own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *Quinn*, *supra* at 574. Here, in remarking that there was no evidence that defendant had legitimately purchased the Chrysler property in question, the trial court did not shift the burden to defendant to prove his innocence, but merely commented on the fact that there was nothing to support defendant's theory of the case so as to undermine the evidence presented by the prosecution.

V

Reversal is additionally not required because of defendant's argument that the trial court referred to its own specialized knowledge of security procedures. Although general knowledge of security procedures at Chrysler or major corporations generally does not fall into the category of "general knowledge upon matters notorious and unquestioned," *People v Simon*, 189 Mich App 565, 567-568; 473 NW2d 785 (1991), the trial court's finding here that a Chrysler employee is required to have written permission to remove property was based upon the testimony of several prosecution witnesses.

VI

The trial court did not abuse its discretion by constructively amending the information during trial to include a second complainant in order to reflect that defendant had in his possession moving dollies from a moving company contracted by Chrysler. MCL 767.76;

People v Potts, 44 Mich App 722, 727; 205 NW2d 864 (1973). There was no change in the charging document, and the amendment was neither surprising nor misleading. *Id.* Furthermore, even if the amendment could be construed as improper, any error was harmless because the trial court did not base its verdict of defendant's guilt on the evidence of the allegedly stolen moving dollies.

VII

The trial court did not err in reserving its ruling on defendant's motion for a directed verdict until the close of the evidence because the case involved a bench trial. *People v Eagen*, 136 Mich App 524, 528-529; 357 NW2d 710 (1984). Finally, because the evidence, viewed in a light most favorable to the prosecution, was amply sufficient to enable a rational trier of fact to find defendant's guilt beyond a reasonable doubt, the trial court properly denied defendant's motion for a directed verdict. *People v Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997).

Affirmed.

/s/ William B. Murphy

/s/ Janet T. Neff

/s/ Joel P. Hoekstra